



**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**[Docket No. 22-14]**

**Omar Garcia, M.D.; Decision and Order**

On November 4, 2021, the former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Omar Garcia, M.D. (hereinafter, Respondent) of Ocala, Florida. OSC, at 1 and 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. FG2055158. *Id.* at 1. It alleged that Respondent is "without authority to handle controlled substances in Florida, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on September 3, 2021, the Florida Board of Medicine entered an Order that, effective immediately, revoked Respondent's state medical license after a finding that he had been convicted of six counts of Health Care Fraud and excluded for cause from participating in the Florida Medicaid program. *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

By email dated January 25, 2022,<sup>1</sup> Respondent's wife submitted a Request for Hearing on Respondent's behalf, stating that Respondent was in federal prison. Request for Hearing dated January 25, 2022. The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ). On January

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<sup>1</sup> Because the Request for Hearing was emailed after 5:00 p.m. on January 25, 2022, it was deemed filed on January 26, 2022. Order Regarding Request for Hearing Attachments and Filing Procedures, at 1.

26, 2022, the ALJ issued an Order Regarding Request for Hearing Attachments and Filing Procedures<sup>2</sup> as well as an Order Directing the Government to File Evidence Regarding Service of the Order to Show Cause. On January 28, 2022, the Respondent's wife filed a copy of her Power of Attorney as well as an updated Request for Hearing dated January 26, 2022. In the updated Request for Hearing, Respondent's wife represented that although Respondent's Florida medical license was revoked, his DEA registration had been issued in Illinois, not Florida. Request for Hearing dated January 26, 2022, at 1. Respondent's wife also noted that Respondent holds three other state licenses and that his DEA registration record was "impeccable." *Id.* On February 9, 2022, the Government filed its Notice of Filing of Evidence Regarding Proof of Service.<sup>3</sup>

On February 9, 2022, the ALJ issued an Order Directing the Government to File Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule. The Government timely filed its Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition) on February 25, 2022. RD, at 2. In its Motion, the Government represented that Respondent lacks authority to handle controlled substances in Florida, the state in which he is registered with the DEA, and argued that, therefore, Respondent's DEA registration must be revoked. Motion for Summary Disposition, at 1-6. Respondent failed to timely file a response to the Government's Motion and on March 25, 2022, the ALJ issued an Order Directing Compliance to Respondent. RD, at 2. By email dated March 21, 2022,<sup>4</sup> Respondent's wife requested additional time to file a response and on the same day, the ALJ issued an Order Regarding Respondent's Extension Request extending the deadline. *Id.* On March 24, 2022, Respondent filed a Response to the Motion for Summary Disposition

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<sup>2</sup> In the Request for Hearing email, Respondent's wife represented that she had included her Power of Attorney in the form of fourteen file attachments, but the ALJ was unable to access the attachments. Order Regarding Request for Hearing Attachments and Filing Procedures, at 1; *see also* Request for Hearing.

<sup>3</sup> The Government's Notice of Filing of Evidence Regarding Proof of Service showed that Respondent was not served with the OSC until January 4, 2022, thus, Respondent's Request for Hearing was timely filed. Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD); *see also* Government's Notice of Filing of Evidence Regarding Proof of Service.

<sup>4</sup> Because the request was emailed after 5:00 p.m. on March 21, 2022, it was deemed filed on March 22, 2022. *Id.* at 3.

(hereinafter, Response). In his Response dated March 22, 2022, Respondent indicated that he missed the original deadline because he is incarcerated and it had been an oversight by his wife. Response, at 1. Respondent also stated that as of March 14, 2022, an updated DEA registration was sent to his home address, and that prior to the update, the registration was listed as being issued in Illinois. *Id.* at 2. Finally, Respondent reiterated that he had medical licenses in other states and noted that his underlying conviction was being appealed. *Id.*

On March 29, 2022, the ALJ granted the Government's Motion for Summary Disposition, finding that "[t]here is no genuine issue of material fact in this case." RD, at 8. The ALJ recommended that Respondent's registration be revoked and that any application to renew or modify his registration, and any applications for any other DEA registrations in Florida, be denied because Respondent lacks state authority to handle control substances. *Id.* at 9. By letter dated April 25, 2022, the ALJ certified and transmitted the record to me for final Agency action and noted that neither party filed exceptions.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

## **FINDINGS OF FACT**

### **Respondent's DEA Registration**

Respondent is the holder of DEA Certificate of Registration No. FG2055158 at the registered address of 7258 SE 2nd Ave, Ocala, FL 34480. Motion for Summary Disposition, Attachment (hereinafter, Gov. Att.) 2, Exhibit (hereinafter, Ex.) 1 (Certificate of Registration). Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on September 30, 2022. *Id.* On April 30, 2021, DEA granted Respondent's request to change his registered address from Illinois to Florida. Gov. Att. 2.

### **The Status of Respondent's State License**

On December 11, 2020, the State of Florida Department of Health (hereinafter, the Department) issued an Administrative Complaint against Respondent alleging that on or about February 27, 2020, the Florida Agency for Health Care Administration terminated Respondent's participation in the state Medicaid program and therefore, Respondent was subject to Department discipline. Gov. Att. 1, Ex. 1, at 5-7. On September 3, 2021, the State of Florida Board of Medicine (hereinafter, the Board) issued a Final Order revoking Respondent's state medical license after finding that Respondent had been convicted of six counts of Health Care Fraud and that Respondent had been sanctioned and terminated with cause from participating in the Florida Medicaid program. *Id.* at 1-3.

According to Florida's online records, of which I take official notice, Respondent's medical license is still revoked.<sup>5</sup> Florida Department of Health License Verification, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited date of signature of this Order). Accordingly, I find that Respondent is not currently licensed to practice medicine in Florida, the state in which he is registered with the DEA.<sup>6</sup>

## DISCUSSION

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<sup>5</sup> Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

<sup>6</sup> Respondent argues that his DEA registration was issued in Illinois, not Florida, however, the record evidence shows that his DEA registration currently has a registered address in Florida. See Gov. Att. 2, Ex. 1 (Certificate of Registration). Further, even if Respondent's registered address were in Illinois, according to Illinois online records, of which I take official notice, Respondent's Illinois medical license is indefinitely suspended and Respondent's Illinois controlled substances registration is expired. Illinois Department of Financial and Professional Regulation License Lookup, <https://online-dfpr.micropact.com/lookup/licenselookup.aspx> (last visited date of signature of this Order). Thus, Respondent is not currently licensed to engage in the practice of medicine nor registered to dispense controlled substances in Illinois. Respondent argues that he has other state medical licenses that could be used as a basis for DEA registration, however, as the ALJ stated, the argument fails "because Respondent provides no evidence to support this assertion; indeed, he does not even identify those other states." RD, at 8. Moreover, "even if [Respondent] does have other valid state medical licenses, his DEA registration is based on his Florida medical license, and that has undeniably been revoked." *Id.*

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617. Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner’s registration “is currently authorized to handle controlled substances in the [S]tate,”

*Hooper*, 76 FR at 71,371 (quoting *Anne Lazar Thorn*, 62 FR 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 FR 18,273, 18,274 (2007); *Wingfield Drugs*, 52 FR 27,070, 27,071 (1987). Thus, it is of no consequence that in this case, Respondent's underlying conviction is being appealed. What is consequential is my finding that Respondent is no longer currently authorized to dispense controlled substances in Florida, the state in which he is registered with the DEA.

According to Florida statute, "A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance." Fla. Stat. Ann. 893.05(1)(a) (West 2022). Further, a "practitioner" as defined by Florida statute includes "a physician licensed under chapter 458<sup>7</sup>." *Id.* at § 893.02(23).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Florida. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in Florida. Thus, because Respondent lacks authority to practice medicine in Florida and, therefore, is not authorized to handle controlled substances in Florida, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked.

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<sup>7</sup> Chapter 458 regulates medical practice.

## **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FG2055158 issued to Omar Garcia, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Omar Garcia, M.D. to renew or modify this registration, as well as any other pending application of Omar Garcia, M.D. for additional registration in Florida. This Order is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**Anne Milgram,**  
*Administrator.*

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